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5 UNITED STATES DISTRICT COURT
6 DISTRICT OF NEVADA

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8 ARTURO TORRES OCHOA,

Case No. 3:13-cv-00619-MMD-VPC

9 Plaintiff,

ORDER

10 v.

11 K. SPIERS, et al.,

12 Defendants.

13 This prisoner civil rights action comes before the Court following plaintiff's failure
14 to pay the \$350.00 filing fee in response to the Court's order of November 14, 2013.

15 Pursuant to 28 U.S.C. § 1915(g), "if the prisoner has, on 3 or more prior
16 occasions, while incarcerated or detained in any facility, brought an action or appeal in a
17 court of the United States that was dismissed on the grounds that is frivolous, malicious,
18 or fails to state a claim upon which relief may be granted," he may not proceed *in forma*
19 *pauperis* and instead must pay the full \$350.00 filing fee in advance, unless he is under
20 "imminent danger of serious physical injury." See *Andrews v. King*, 398 F.3d 1113, 1123
21 (9th Cir. 2005); see also *Rodriguez v. Cook*, 169 F.3d 1176, 1178-82 (9th Cir. 1999);
22 *Tierney v. Kupers*, 128 F.3d 1310, 1311-12 (9th Cir. 1997).

23 In the order of November 14, 2013, the Court found that, on at least three (3)
24 occasions, the Court has dismissed civil actions commenced by plaintiff while in
25 detention for failure to state a claim for which relief may be granted. (Dkt. no. 3).¹ The


26 ¹See *Ochoa v. Cook, et al.*, 3:02-cv-00450-DWH-RAM; *Ochoa v. Willis, et al.*,
27 3:02-cv-00545-ECR-VPC (both dismissed for failure to state a claim upon which relief
28 may be granted); *Ochoa v. Putter C/O, et al.*, 3:10-cv-00364-HDM-RAM (dismissed as
delusional and factually frivolous). The Court takes judicial notice of its prior records in
the above matters.

1 Court found that, in the complaint, plaintiff failed to plausibly allege that he is under
2 imminent danger of serious physical injury. (*Id.*) The Court denied plaintiff's application
3 to proceed *in forma pauperis* and ordered he must pay the full filing fee within thirty (30)
4 days or his case would be dismissed, pursuant to 28 U.S.C. § 1915(g). (*Id.*)

5 Plaintiff has not paid the filing fee or otherwise responded to the Court's order of
6 November 14, 2013. Plaintiff, having failed to pay the filing fee for this action and having
7 failed to demonstrate that he is under imminent danger of serious physical injury, has
8 not made the showing required by 28 U.S.C. § 1915(g) to allow his complaint to
9 proceed.

10 It is therefore ordered that this action is dismissed without prejudice for failure to
11 pay the filing fee. The Clerk of Court shall enter final judgment accordingly.

12 DATED THIS 23rd day of December 2013.

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15 MIRANDA M. DU
16 UNITED STATES DISTRICT JUDGE
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